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EXAMINER

SMOOT, STEPHEN W

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VLADIMIR GRUSHIN,
DANIEL D. LECLOUX,
VIACHESLAV A. PETROV,
and YING WANG

Appeal 2008-4124
Application 10/696,048
Technology Center 2800

Decided: November 3, 2008

Before EDWARD C. KIMLIN, PETER F. KRATZ, and LINDA M.
GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 12-18. A copy of illustrative claims 12 and 16 are appended to this decision.

The Examiner relies upon the following references as evidence of obviousness:

Hamprecht
Forrest

US 6,169,184 B1
US 6,894,307 B2

Jan. 2, 2001
May 17, 2005

Djurovich et al., Ir(III) Cyclometalated Complexes as Efficient Phosphorescent Emitters in Polymer Blend and Organic LEDs," *Polymer Preprints*, Vol. 1, No. 1, 770-71 (2000).

Dedeian et al., "A New Synthetic Route to the Preparation of a Series of Strong Photoreducing Agents: *fac* Tris-Ortho-Metalated Complexes of Iridium (III) with Substituted 2-Phenylpyridines," *Inorg. Chem.*, Vol. 30, 1685-687 (1991).

Appellants' claimed invention is directed to the recited compounds and their use in an electronic device.

Appealed claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hamprecht in view of Forrest and Djurovich. Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combination of references further in view of Dedeian.

We have thoroughly reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we find that the subject matter of claim 12 would have been obvious to one of ordinary skill in the art in view of the applied prior art. However, we will not sustain the Examiner's rejection of claims 13-18 which are directed to an electronic device.

We consider first the Examiner's rejection of claim 12 which defines compounds having one of nine recited structures. Hamprecht discloses substituted phenylpyridines that, like Appellants' compounds, have methyl substituents on the heterocyclic ring and fluorine substituents on the phenyl ring. In particular, the structural formula of Hamprecht encompasses compounds wherein the only distinction between Appellants' first recited compound is the placement of the methyl substituent on the heterocyclic

ring. Hamprecht teaches substituted phenylpyridines wherein the methyl substituent is located on the adjacent carbon relative to the first formula recited in claim 12.

It is well settled that a prima facie case of obviousness exists when a claimed compound is sufficiently similar in structure to a prior art compound that one of ordinary skill in the art would have a reasonable expectation that the claimed and prior art compounds share similar properties. *See In re Hoch*, 428 F.2d 1341, 1344 (CCPA 1970). In the present case, in view of the substantial structural similarity between the first recited compound of claim 12 and the substituted phenylpyridines encompassed by Hemprechts' formula, we are satisfied that one of ordinary skill in the art would have reasonably expected that Appellants' substituted phenylpyridine would be an effective herbicide, as suggested by Hamprecht. In general, a different use of an obvious compound, which use was not taught in the art, does not speak to the nonobviousness of the compound. *In re Shetty*, 566 F.2d 81, 85 (CCPA 1977); *In re Lintner*, 458 F.2d 1013, 1016 (CCPA 1972); *In re Hoch, supra*. Significantly, claim 12 on appeal defines compounds per se. Appellants may not gain patent protection for a compound that would have been obvious to one of ordinary skill in the art by finding another use for the compound.

The rejection of claims 13-18, which are drawn to an electronic device, is another matter. We agree with Appellants that Hamprecht and the other cited references would have provided no teaching or suggestion of using the herbicides of Hamprecht in an electronic device, let alone modifications of Hemprechts' substituted phenylpyridines in accordance with the applied secondary references. We concur with Appellants that

Hemprecht is non-analogous art with respect to the claimed electronic device and the teachings of the secondary references. We find no merit in the Examiner's rationale that the applied references are all in the same field of endeavor inasmuch as they are directed to "organic compounds that utilize phenylpyridines ligands" (Ans. 8, first para.). Manifestly, simply because compounds are structurally similar does not result in them being in the same field of endeavor. Clearly, a reference disclosure directed to herbicides is not in the same field of endeavor as the electronic applications of the secondary references applied by the Examiner.

In conclusion, based on the foregoing, the Examiner's rejection of claim 12 is sustained, but we are constrained to reverse the Examiner's § 103 rejections of claims 13-18. Accordingly, the Examiner's decision rejecting the appealed claims is affirmed-in-part.

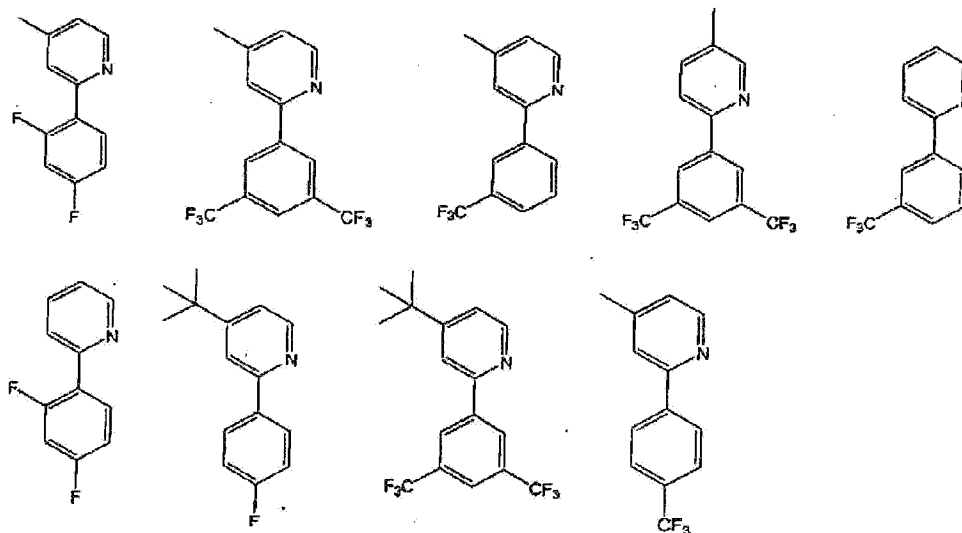
No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(effective Sept. 13, 2004).

AFFIRMED-IN-PART

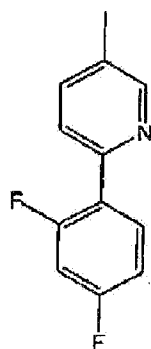
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APPENDED CLAIMS 12 AND 16

12. A compound having one of the following structures:



16. An electronic device comprising an organic layer comprising at least one Ir(III) compound made from precursor compounds having the following structure:



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